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6 Attorneys for Plaintiffs
7 OpenGate Capital Group LLC,
8 RoundRock 092012 LLC,
RoundRock Scientific International LLC and
RoundRock Mexico LLC

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

12 OPENGATE CAPITAL GROUP LLC, a
13 Delaware limited liability company,
14 ROUNDROCK 092012 LLC, a Delaware
15 limited liability company, ROUNDROCK
SCIENTIFIC INTERNATIONAL LLC, a
Delaware limited liability company,
ROUNDROCK MEXICO LLC, a
Delaware limited liability company,

Plaintiffs,

v.

19 THERMO FISHER SCIENTIFIC, INC., a
Delaware corporation, and Does 1-50,

Defendants.

**COMPLAINT FOR:
(1) VIOLATION OF
SECTION 10(b) AND RULE 10b-5
OF THE SECURITIES EXCHANGE
ACT OF 1934;
(2) FRAUDULENT
MISREPRESENTATION;
(3) NEGLIGENT
MISREPRESENTATION;
(4) BREACH OF CONTRACT;
(5) VIOLATION OF SECTION
9(A)(4) OF THE SECURITIES
EXCHANGE ACT OF 1934;
(6) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

Glaser Weil Fink Jacobs
Howard Achen & Shapiro LLP

1 Plaintiffs OpenGate Capital Group LLC, RoundRock 092012 LLC,
2 RoundRock Scientific International LLC, and RoundRock Mexico LLC (collectively,
3 “RoundRock” or “Plaintiffs”), by their attorneys Fred Heather and Amin Al-Sarraf of
4 the law firm Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP, for their
5 complaint against defendant Thermo Fisher Scientific, Inc. (“Thermo Fisher” or
6 “Defendant”) and Does 1-50 (the “Doe Defendants”) (collectively “Defendants”),
7 allege as follows:

NATURE OF THE ACTION

9 1. Thermo Fisher acted in bad faith to induce Plaintiffs to purchase its Lab
10 Workstation Business in October 2012, by, among other things, fraudulently
11 concealing critical information related to the safety, security, viability and operation
12 of the business, including the fact that its primary manufacturing facility has been
13 overrun by a reputably violent and hostile Mexican drug cartel.

14 2. Thermo Fisher (NYSE: TMO), a publicly-traded company with annual
15 revenues in excess of \$12 billion, prides itself on enabling others to make the world
16 “healthier, cleaner and safer.” Notwithstanding this lofty epithet, Thermo Fisher has,
17 in fact, acted over the course of many years, in conscious disregard of the health and
18 safety of its employees and others in its oversight of a significant division of its
19 business.

20 3. As of 2012, Thermo Fisher carried on its books a neglected, or
21 “orphaned,” division of its multi-billion dollar healthcare equipment business, called
22 the Lab Workstation Business. The Lab Workstation Business manufactures
23 laboratory furniture in facilities in, among other places, Arkansas and Mexico. The
24 facility in Reynosa, Mexico (the “Reynosa Facility”) is the largest, most profitable
25 facility for the Lab Workstation Business. The Reynosa Facility employs a workforce
26 of approximately 1,000, and generates approximately 40-50% of the revenue of the
27 Business.

28 4. During all times under Thermo Fisher's control, the Lab Workstation

1 Business was run by a group of companies including Hamilton Fisher L.L.C., FHML
2 S. de R.L. de C.V., Fisher Hamilton S. de R.L. de C.V., Collegedale, LLC, Advanced
3 Lab Concepts, Inc., Advanced Lab Concepts of Austin, LLC and Epoxy Products,
4 L.L.C. (collectively, the “Hamilton Entities” or the “Securities”).

5 5. Compelled to immediately divest itself from the Lab Workstation
6 Business for financial and accounting purposes, Thermo Fisher enlisted the
7 investment bank, Barclays, to conduct a public auction to sell the Lab Workstation
8 Business. Thermo Fisher instructed Barclays to sell the Hamilton Entities as fast as
9 possible, and, eventually, regardless of purchase price.

10 6. The Thermo Fisher/ Barclays’ auction caught RoundRock’s attention.
11 Attracted by, among other things, the appeal and potential of the division, which
12 boasted approximately \$180 million in annual revenues, RoundRock initiated
13 negotiations with Thermo Fisher in mid-2012.

14 7. Desperate, in part, on account of financial and reputational factors
15 incentivizing Thermo Fisher to remove the neglected business from its books, Thermo
16 Fisher acted with haste to exploit the steadfast interest of RoundRock. What
17 RoundRock did not know at the time was that Thermo Fisher had additional, more
18 compelling reasons to cause it to divest itself from what can only be described as a
19 business fraught with logistical and legal complications that threatened not only the
20 profitability of the business but its viability at all—including that the Reynosa Facility
21 was under siege and the subject of repeated, near-daily security breaches by members
22 of the Gulf Cartel, an intimidating and violent criminal syndicate and drug trafficking
23 organization residing in Mexico.

24 8. At all times during the subsequent negotiations leading to the sale of its
25 Lab Workstation Business, and unbeknownst to Plaintiffs, Thermo Fisher was intent
26 on ensuring that Plaintiffs would not discover certain material information about the
27 Reynosa Facility, which had been touted throughout the sale as the Lab Workstation
28 Business’ most productive and profitable facility.

1 9. In order that it could quickly siphon off the troubled business, Thermo
2 Fisher engaged in painstaking efforts to obfuscate, conceal and affirmatively
3 misrepresent the true condition of the Lab Workstation Business. From the first
4 presentation and throughout the ensuing negotiations, Thermo Fisher structured the
5 sales and diligence process in a manner that would eliminate the possibility of
6 RoundRock discovering, among other things, the dangerous and concerning threats
7 existent at the Reynosa Facility and the violent attacks that were transpiring in the
8 region as Thermo Fisher simultaneously held itself out as providing RoundRock with
9 critical information about the Facility. Instead, throughout the sales and diligence
10 process, Thermo Fisher:

- 11 • Provided materials which, although purporting to represent the true
12 conditions of the facilities, including specifically, their respective
13 strengths and highlighting certain features of the facilities’
14 “geography,” failed to disclose facts about the Cartel and further failed
15 to signal the significant burdens, costs and potential liabilities
16 stemming from the facilities’ locale;
- 17 • Represented that it was “committed to the ongoing success” of the Lab
18 Workstation Business’ operations in Mexico notwithstanding that its
19 actions predating the auction included turning a blind eye to the Cartel
20 situation, maintaining inadequate security despite pleas from its
21 operations managers calling for improvements, and having ignored
22 proposals to provide fortification to the Reynosa Facility, which it
23 ultimately failed to act on;
- 24 • Structured site visits in a manner designed to avoid RoundRock’s
25 discovery of the hostile encroachment and occupation by the Cartel of
26 the Reynosa Facility and other issues relating to the facilities’
27 operations;
- 28 • Intentionally ordered the employees of the Hamilton Entities to follow

1 a strict code of silence, making it impossible for RoundRock to
2 ascertain knowledge of the working and operating conditions that
3 existed and that only could have been known by Thermo Fisher and its
4 employees in the Reynosa and other facilities;

5 • Concealed correspondence relating to the Cartel activity, including
6 information and proposals detailing security deficiencies and
7 enhancements necessary to fortify the Reynosa Facility.

8 10. Notably, notwithstanding the fact that its senior executives believed the
9 situation to be grave enough to warrant the preparation and exploration of proposals
10 for work to fortify the multi-million dollar Reynosa Facility and ***notwithstanding a***
11 ***breach of security in the midst of the negotiations***, Thermo Fisher deliberately
12 withheld all information related to the Cartel activity, including situation reports and
13 proposals for security upgrades to address the ongoing breaches. In fact, none of
14 Thermo Fisher's documents describing the Lab Workstation Business mentioned any
15 of the multiple and serious problems that, now known, riddled the past operations and
16 future business outlook of the Hamilton Entities.

17 11. Thermo Fisher executives at the highest levels who had been
18 knowledgeable about the Cartel activity for years, took additional affirmative steps to
19 suppress material information, including by repeatedly resisting, thwarting and
20 dismissing attempts by RoundRock to become more knowledgeable about the
21 business throughout the diligence process, manipulating and providing misleading
22 and inconsistent information in response to diligence requests, concealing material
23 flaws in the Lab Workstation Business, including issues that arose simultaneously
24 during the negotiations, and the huge contingent liabilities facing the Hamilton
25 Entities and rushing the diligence process all the while placing unreasonable
26 restrictions and a fast timetable on the deal's closing.

27 11. In true form, Thermo Fisher also withheld material information
28 regarding the Hamilton Entities' Epoxy Products facility in Mountain Home,

1 Arkansas (the “Arkansas Facility”). Specifically, Thermo Fisher’s senior executives
2 directed employees in Arkansas to conceal certain significant facts concerning the
3 operations of the Arkansas Facility.

4 12. As a result of Thermo Fisher’s bold-faced deceptive scheme, Plaintiffs
5 have suffered considerable damages arising from their purchase of the Hamilton
6 Entities.

7 **THE PARTIES**

8 12. Plaintiff OpenGate Capital Group LLC is a Delaware limited liability
9 company with its principal place of business in Los Angeles, California.

10 13. Plaintiff RoundRock 092012 LLC is a Delaware limited liability
11 company with its principal place of business in Los Angeles, California. RoundRock
12 092012 LLC is an indirect subsidiary of, and is controlled by, OpenGate Capital
13 Group LLC.

14 14. Plaintiff RoundRock Scientific International LLC is a Delaware limited
15 liability company with its principal place of business in Los Angeles, California.
16 RoundRock Scientific International LLC is a subsidiary of RoundRock 092012 LLC.

17 15. Plaintiff RoundRock Mexico LLC is a Delaware limited liability
18 company with its principal place of business in Los Angeles, California. RoundRock
19 Mexico LLC is a subsidiary of RoundRock 092012 LLC.

20 16. On information and belief, Defendant Thermo Fisher Scientific, Inc. is a
21 Delaware corporation with its principal place of business in Boston, Massachusetts.

22 **JURISDICTION AND VENUE**

23 17. The jurisdiction of this Court lies in, among other places, the provisions
24 of 28 U.S.C. § 1331 because this action arises under the provisions of Section 10(b)
25 of the Securities Exchange Act of 1934, 15 U.S.C. § 78(j) and 17 C.F.R. § 240.10b-5.

26 18. This Court has supplemental jurisdiction over the state law claims in this
27 action pursuant to 28 U.S.C. § 1337 because the remaining state law claims are so
28 related to the federal securities claims that they form a part of the same case or

1 controversy and fall within this Court's supplemental jurisdiction.

2 19. Venue is proper in this district pursuant to 15 U.S.C. §78aa and 28
3 U.S.C. §1391.

4 **FACTUAL ALLEGATIONS**

5 **A. Thermo Fisher Sought To Off-Load The Hamilton Entities At All Costs.**

6 20. As of June 2012, Thermo Fisher carried on its books a business called
7 the Lab Workstation Business, which was conducted by the Hamilton Entities. The
8 Lab Workstation Business had been run without adequate controls, incurred overruns
9 and paid commissions to Thermo Fisher employees in "off balance" sheet
10 transactions.

11 21. On June 28, 2012, Thermo Fisher announced in a Current Report on
12 Form 8-K filed with the Securities and Exchange Commission ("SEC") that Thermo
13 Fisher's senior management made a decision to pursue a sale of the Lab Workstation
14 Business, part of Thermo Fisher's "Laboratory Products and Services Segment." The
15 Form 8-K filed with the SEC stated that "the Company expects to complete such a
16 transaction within twelve months. The Company will report the financial results of its
17 laboratory workstations business as a discontinued operation beginning in the second
18 quarter of 2012."

19 22. Thermo Fisher also disclosed in its Form 8-K that, on a business with
20 revenues in 2011 of \$180 million, Thermo Fisher planned to record an after-tax
21 charge of approximately \$50 million as the estimated loss on the planned divestiture.

22 23. Upon information and belief, either at or about the time it issued these
23 public statements, Thermo Fisher retained Barclays to run a public auction to sell the
24 Hamilton Entities and the Lab Workstation Business, with the auction conducted to
25 sell the Hamilton Fisher entities as fast as possible, and, eventually, regardless of
26 purchase price.

27 24. Among other things, Thermo Fisher and Barclays' failure to sell the Lab
28 Workstation Business and the Hamilton Entities by the end of 2012 would have

1 required public disclosure by Thermo Fisher that it had failed to sell the \$180 million
2 Lab Workstation Business within 6 months, a fact that would have certainly raised
3 concerns about undisclosed liabilities by public investors, and would have directly
4 impacted Thermo Fisher's earnings per share, arguably the most important metric on
5 Wall Street.

6 **B. RoundRock's Negotiations Leading To Purchase of the Hamilton Entities.**

7 25. Attracted by the appeal and potential of the Lab Workstation Business,
8 on July 2, 2012, RoundRock expressed interest in potentially acquiring the Hamilton
9 Entities.

10 26. After executing a Non-Disclosure Agreement required by Thermo Fisher
11 in order to receive non-public documents about the Hamilton Entities, RoundRock
12 made preliminary due diligence requests in the early part of July 2012.

13 27. Although Thermo Fisher provided some information during the parties'
14 early discussions, the information flow stopped in late August 2012.

15 28. On information and belief, between late August and September 2012,
16 Thermo Fisher had engaged another buyer who ultimately backed out.

17 29. Frantic, in mid-September 2012, Barclays contacted RoundRock to re-
18 engage in negotiations and seek a swift closing of the sale.

19 30. Motivated to fully diligence the Hamilton Entities and the Lab
20 Workstation Business, RoundRock mobilized team members to meet with
21 management and to conduct diligence regarding the financial aspects of the business.
22 Numerous meetings and telephone calls then took place over the course of the next
23 several days.

24 31. During these early discussions, Thermo Fisher made clear that it desired
25 to have a signed purchase agreement before satisfactory completion of due diligence.

26 32. As of late in the day on Friday, September 21, 2012, the RoundRock
27 team was in Boston to negotiate a purchase contract with Thermo Fisher for the
28 Hamilton Entities. The stated goal of the parties was to negotiate and execute a

1 purchase agreement by Sunday night.

2 33. In order to accommodate Thermo Fisher's stated need for expedience in
3 closing the deal, RoundRock proposed to structure the transaction such that the
4 agreement, after negotiation, would be executed and the transaction would close after
5 certain conditions, including satisfactory completion of due diligence (the "Closing
6 Due Diligence Condition").

7 34. The Closing Due Diligence Condition, however, was a term rejected out
8 of hand by Thermo Fisher's negotiating team, which included Shiraz Ladiwala,
9 Executive Vice President of Business Development of Thermo Fisher. In fact,
10 Thermo Fisher communicated to Plaintiffs that it wanted the transaction to close
11 simultaneously with the execution of the agreement.

12 35. From September 18, 2012, and afterward, RoundRock continuously
13 requested financial and operational data to assess the Hamilton Entities. These
14 requests included the most fundamental items, such as receivables, outstanding letters
15 of credit, a listing of performance bonds, inventory reports and working capital needs
16 of the company.

17 36. In response to RoundRock's inquiries, reports and ever-changing
18 information concerning Accounts Receivables, Aged Accounts, Inventory Levels,
19 Historical Inventory Write-Downs, Employee Census Data, Payroll and Retention
20 Payments, and Listing of Letters of Credit and Performance Bonds to be assumed or
21 guaranteed by RoundRock, were provided. Each request, however, was met with
22 acrimony by Thermo Fisher and the information produced changed with each
23 question by RoundRock intended to probe into the accuracy and basis for the reported
24 information.

25 37. The parties spent the weekend of September 22 and 23, 2012, negotiating
26 at the offices of Thermo Fisher's counsel, during which time numerous additional due
27 diligence requests were made by RoundRock to understand the Lab Workstation
28 Business and the Hamilton Entities, including to independently verify the sales

1 documents and manager presentations made to the RoundRock team.

2 38. By early Saturday morning, September 22, 2012, it was clear that much
3 information that had specifically been requested, including in connection with the
4 Reynosa Facility in Mexico, had not been provided by Thermo Fisher. On that
5 morning, RoundRock provided Thermo Fisher with additional items that it expected
6 and desired to see. Representatives of Barclays, on Thermo Fisher's behalf,
7 expressed dismay, discontent and incredulity that the additional items had been
8 requested and objected to providing additional information on the grounds that the
9 information was either already made available to RoundRock or not relevant.

10 39. RoundRock's team continued to work through the weekend to
11 understand the true character of the Lab Workstation Business and the Hamilton
12 Entities.

13 40. By Sunday, September 23, 2012, communication between the parties
14 was tense. As of that point, the parties were unable to come to agreement on material
15 terms of the Agreement, including the Closing Due Diligence Condition, the timing of
16 signing and closing, and an adjusted purchase price in light of Thermo Fisher's
17 conduct to date.

18 41. After a few days, Barclays brought the parties back together and
19 discussions resumed on Thursday, September 27, 2012. RoundRock continued its
20 due diligence, with answers to its questions provided by Thermo Fisher in a manner
21 that RoundRock now understands was purposefully meant to mislead RoundRock.
22 RoundRock continued its review of additional documents made available by Thermo
23 Fisher and, based upon the diligence provided and further representations made by
24 Thermo Fisher regarding the operations of the Hamilton Entities, RoundRock agreed
25 to execute a purchase agreement on Friday, October 5, 2012, without a provision for
26 unwinding the deal in the event of any post-execution discoveries, and with a very
27 short window for further diligence between signing and closing of the transaction.

28 42. Reflective of the manner in which Thermo Fisher conducted itself during

1 the course of the transaction, at 11 p.m. on October 5, 2012, when the parties were in
 2 the midst of signing and exchanging the Equity Purchase and Sale Agreement By and
 3 Between Thermo Fisher Scientific Inc. and RoundRock 092012 LLC (the "Purchase
 4 Agreement"), Thermo Fisher dumped a series of material documents on RoundRock
 5 reflecting additional liabilities to be guaranteed by RoundRock, amounting to far
 6 more what RoundRock was previously informed by Thermo Fisher.

7 43. By that time, the Purchase Agreement was effective and RoundRock had
 8 no recourse to undo the deal.

9 44. On or about October 25, 2012, the parties ultimately closed the
 10 transaction for the purchase and sale of the Hamilton Entities (as defined
 11 hereinabove) in exchange for consideration, including \$3,000,000 in cash, 10% of the
 12 fully diluted equity of Plaintiffs at the closing, and a promissory note for \$10,000,000
 13 (the "Sale").

14 **C. Plaintiffs Discover Security Threats to Reynosa Facility That Were**
 15 **Fraudulently Concealed By Thermo Fisher**

16 45. RoundRock took possession of the premises of each of the Hamilton
 17 Entities' facilities in the United States and Mexico at midnight on October 22, 2012.
 18 Until that precise moment, Thermo Fisher had refused to allow RoundRock access to
 19 any of the facilities, including any contact permitted with its employees.

20 46. Following their purchase of the Hamilton Entities, Plaintiffs discovered,
 21 for the first time, ongoing, hostile security threats and daily encroachments by the
 22 Cartel at the Hamilton Entities' manufacturing facility in Reynosa, Mexico

23 47. Within hours of RoundRock assuming possession and ownership of the
 24 facilities, on the day RoundRock first appeared with its management team to conduct
 25 town hall meetings and transition the employees, an employee at the Reynosa Facility
 26 in Mexico apprised a representative of RoundRock of the Cartel activity. In addition
 27 to reporting on the Cartel's regular entry of the premises and even the main building
 28 itself, the employee expressed serious concerns about the safety of the Facility, and

1 asked that Plaintiffs take action to address the problem, which had not been done
2 under the previous owner, Thermo Fisher.

3 48. Plaintiffs immediately initiated an investigation to determine the nature
4 and extent of the Gulf Cartel activity at the Reynosa Facility. This investigation is
5 ongoing.

6 49. During the course of their investigation, to date, Plaintiffs have
7 discovered that:

8 a. The Reynosa Facility is, and has been continuously since at least
9 2011 (while Thermo Fisher still owned the Hamilton Entities), infiltrated by senior
10 local leaders of the “Gulf Cartel,” a Mexican criminal organization active along the
11 border of Mexico and the United States, on a daily basis and at all hours of the day;

12 b. On or about October 19, 2011, individuals commonly known or
13 believed to be involved with the Cartel brandished weapons to employees at the
14 Reynosa Facility in order to gain access to the parking lot;

15 c. On that same day, those individuals gained access to the lot and
16 left a vehicle in the Facility parking lot for approximately nine hours;

17 d. On October 24, 2011, the same individuals as those who entered
18 the parking lot on October 19, 2012, returned and left the same vehicle in the parking
19 lot of the Facility for more than 24 hours.

20 e. Since the October 19 and October 24, 2011, incidents, members of
21 the Gulf Cartel have entered the grounds of the Reynosa Facility every day, regularly
22 leaving their cars – and, on occasion, tractor-trailers filled with unknown cargo – in
23 the Facility’s parking lot overnight;

24 f. In or around January and February 2012, the movement of
25 vehicles operated by Gulf Cartel members onto the premises of the Reynosa Facility
26 notably increased, prompting employees at the Facility to seek assistance from
27 Thermo Fisher;

28 g. In or around January and February 2012, Thermo Fisher’s security

1 advisors attempted to develop a strategy for security measures to be taken at the
2 Reynosa Facility in response to the cartel infiltration. They proposed certain
3 upgrades to the guard booths, perimeter fencing and parking lot access ramps;

4 h. None of the proposed measures or upgrades were meaningfully
5 or effectively implemented, despite repeated requests from employees at the Reynosa
6 Facility;

7 i. On or about September 23, 2012 – in the midst of negotiations
8 between Plaintiffs and Thermo Fisher, no less – armed militants entered the cafeteria
9 at the Reynosa Facility after being followed by rivals (either opposing cartel members
10 or soldiers). They stayed for an hour or more before leaving;

11 j. On or about October 3, 2012, during the course of negotiations
12 between Thermo Fisher and RoundRock, and due diligence by RoundRock, Art
13 Wood, the Vice President of Human Resources at Thermo Fisher, instructed the
14 Country Human Resources Director for Mexico, Roberto Enriquez, not to disclose
15 material information regarding security threats at the Reynosa Facility, to
16 RoundRock, including breaches of the premises and building by members of the Gulf
17 Cartel. Specifically, in response to an email sent by Mr. Enriquez to Mr. Wood and
18 John Mitchell (Thermo Fisher's Director of Corporate Security), informing Messrs.
19 Wood and Mitchell of then-recent violent activity inside the Reynosa Facility, Mr.
20 Wood stated: "I believe we are through the diligence process with our buyers, so
21 don't know that now is the time to raise the issue." In the same email, Mr. Wood also
22 acknowledged that security measures must be taken to address the threat of the Cartel;

23 k. As of the time RoundRock took possession of the Reynosa
24 Facility, the presence of the Cartel was widespread and pervasive. Members of the
25 cartel, known as "hawks," occupy a daily presence outside of the gate of the Facility.
26 The "hawks" monitor the Facility in this manner 24 hours a day, 7 days a week, even
27 taking comfort in the air-conditioned security booth when it is helpful;

28 l. The Cartel's presence is widespread knowledge amongst the

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1 Reynosa Facility's employees.

2 50. Upon information and belief, Thermo Fisher understood that the security
3 threats, and breaches of the Reynosa Facility by members of a drug cartel, would
4 influence the course of negotiations and would likely dissuade RoundRock from
5 entering into the Purchase Agreement.

6 51. On information and belief, during a site visit to the Reynosa Facility
7 prior to the closing, Thermo Fisher ensured that Plaintiffs' representatives could not
8 tour or inspect the perimeter of the Facility and avoided any visits in the evening,
9 when the Cartel activity generally takes place.

10 52. On at least one occasion in 2013, members of the Gulf Cartel again
11 utilized the Reynosa Facility to take cover from a gun battle taking place outside of
12 the Facility.

13 53. Upon information and belief, as a result of the Cartel activity, the
14 managers of the Reynosa Facility leave the premises each day before sundown.

15 54. The infiltration and threats by Gulf Cartel members at the Reynosa
16 Facility was fully known by corporate executives at Thermo Fisher as early as
17 November 2011, approximately one year prior to the sale of the Hamilton Entities to
18 Plaintiffs.

19 **D. Thermo Fisher Executives at the Highest Levels Were Aware Of the Drug**

20 **Cartel Activity at the Reynosa Facility Nearly A Year Before The Sale**

21 55. During the course of their investigation, Plaintiffs have discovered that at
22 least the following Thermo Fisher employees and executives were aware of the
23 infiltration and drug cartel activity at the Reynosa Facility since at least as early as
24 November 2011:

- a. Thomas W. Loewald (Senior Vice President, President Laboratory Products Group);
- b. Joseph S. Webb (Vice President, Manufacturing Operations, Sourcing and Logistics);

- 1 c. Bob Simpson (Vice President and General Manager, Laboratory
- 2 Workstations);
- 3 d. Art Wood, (Vice President of Human Resources at Thermo Fisher)
- 4 e. Fiona Walker (Vice President, Human Resources);
- 5 f. Joseph A. Baiunco (Vice President, Human Resources);
- 6 g. Roberto Enriquez (Country Human Resources Director for
- 7 Mexico);
- 8 h. Jared Slagle (Director of Finance, Laboratory Equipment
- 9 Division);
- 10 i. Amy L. Martin (Director, Human Resources); and
- 11 j. John Mitchell (Director of Corporate Security).

12 56. On or about November 2, 2011, Thermo Fisher's Country Human
13 Resources Director for Mexico, Roberto Enriquez, sent a detailed email to Joseph
14 Baiunco and John Mitchell describing recent incidents wherein Gulf Cartel members
15 had breached the parking lot and security office at the Reynosa Facility.

16 57. On or about November 11, 2011, Joseph Webb provided a "Reynosa
17 security update" to Bob Simpson, Jared Slagle, Ricardo Salazar, Amy Martin, Fiona
18 Walker and Thomas Loewald, informing them that the situation involving the drug
19 cartel was being "worked" and that he would "advise further as information becomes
20 available."

21 58. Plaintiffs are informed and believe, and on that basis allege that, despite
22 its knowledge of the activity at the Reynosa Facility, beginning in November 2011,
23 Thermo Fisher made none of the upgrades that were recommended by its security
24 advisors in January and February 2012, and took no meaningful action to fortify or
25 further secure the Facility in response to the continuing cartel infiltration. Instead,
26 Thermo Fisher began searching for a buyer on whom it could dump the Hamilton
27 Entities.

28 / / /

1 59. Moreover, at no point prior to the purchase and sale of the Hamilton
2 Entities were Plaintiffs ever made aware of the drug cartel activity on the premises of
3 the Reynosa Facility.

4 60. Rather, with full knowledge about the scope and magnitude of the drug
5 cartel activity on the premises of the Reynosa Facility, Thermo Fisher intentionally
6 concealed that information from Plaintiffs during the due diligence process for the
7 Sale.

8 **E. Thermo Fisher Concealed Material Information With Respect To Other**
9 **Aspects Of The Hamilton Entities**

10 61. Thermo Fisher concealed additional material facts with respect to the
11 safety, viability and operation of the other facilities operated by the Hamilton Entities.

12 62. For example, Thermo Fisher's Vice President of Manufacturing
13 Operations, Sourcing And Logistics, Joseph S. Webb, instructed employees at the
14 Epoxy Products facility in Mountain Home, Arkansas to withhold information
15 regarding certain operations from Plaintiffs at a site visit to the Arkansas Facility
16 prior to the Sale.

17 63. In the days and weeks prior to the closing, Thermo Fisher also expressly
18 disallowed Plaintiffs from speaking at all with any employees working for the
19 Hamilton Entities.

20 64. Further, Plaintiffs are informed and believe that Thermo Fisher may have
21 concealed additional material facts regarding the Hamilton Entities in order to induce
22 the Sale.

23 **F. In Addition To Concealing Material Information, Thermo Fisher Made**
24 **Misleading, Affirmative Representations To Plaintiffs**

25 65. Many of the material terms in the Purchase Agreement include
26 representations by Thermo Fisher concerning the existing conditions and operations at
27 the various facilities, all of which render Thermo Fisher's conduct and the materials
28 they provided additionally misleading. Specifically, in its "Confidential Information

1 Presentation" memorandum that was provided to Plaintiffs during the course of due
2 diligence, Thermo Fisher went so far as to make representations to Plaintiffs
3 regarding the positive characteristics of the "Geography" of Reynosa, Mexico,
4 without any mention of or warning about the prevalence of violent, criminal activity
5 in and around the Reynosa Facility itself. Instead, Thermo Fisher merely stated that
6 the city of Reynosa is "highly industrialized" and has "easy shipping routes to other
7 key cities." In that same memorandum, Thermo Fisher stated that it was "committed
8 to the ongoing success" of the Lab Workstation Business in Mexico.

9 66. The Purchase Agreement, dated October 5, 2012, also contains numerous
10 representations and warranties and other statements relating to the operations of the
11 business.

12 (a) Paragraph 2.11 of the Agreement states, among other things that "... all
13 of such properties and buildings ... (ii) are suitable, sufficient and appropriate in all
14 material respects for their current and contemplated uses";

15 (b) Paragraph 2.18 provides that "the Companies and Subsidiaries are in
16 compliance with all Laws of any federal, state or foreign government"; and

17 (c) Paragraph 2.7(n) contains, in part, a representation that the Hamilton
18 Entities had not "suffered a Business Material Adverse Effect", which is defined in
19 paragraph 2.1(a) as, in relevant part, "any change, effect or circumstance that (i) is
20 materially adverse to the business".

21 67. These representations and warranties were misleading, patently false and
22 were designed to induce Plaintiffs' purchase of the Hamilton Entities despite serious
23 concerns that should have been disclosed.

24 **FIRST CLAIM FOR RELIEF**

25 **(Violation of Section 10(b) of the 1934 Securities Exchange Act (15 U.S.C. §**
78j(b)) and Rule 10b-5 (17 C.F.R. § 240.10b-5) Against All Defendants)

27 68. Plaintiffs reallege and incorporate by reference each and every allegation
28 contained in the above paragraphs as if fully set forth herein.

1 69. Defendants engaged in a scheme to induce the sale of the Hamilton
2 Entities to Plaintiffs by, among other things, omitting to disclose facts material to the
3 value, security and safe operation of the Hamilton Entities and their facilities, and by
4 making affirmative misrepresentations to the same effect.

5 70. Defendants knew and failed to disclose to Plaintiffs material facts,
6 including but not limited to:

7 a. The Reynosa Facility is, and has been continuously since at least
8 2011, infiltrated by members of the Gulf Cartel, a Mexican criminal organization, on
9 a daily basis;

10 b. On or about October 19, 2011, individuals known or believed to
11 be associated with the Gulf Cartel brandished weapons to employees at the Reynosa
12 Facility;

13 c. On or about October 19, 2011, individuals known or believed to
14 be associated with the Gulf Cartel gained access to the parking lot of the Reynosa
15 Facility and left a vehicle there for approximately nine hours;

16 d. On or about October 24, 2011, the same individuals gained entry
17 into the parking lot again and left their vehicle for more than 24 hours;

18 e. Since the incidents on October 19 and 24, 2011, members of the
19 Gulf Cartel have entered the grounds of the Reynosa Facility every day, regularly
20 leaving their cars – and, on occasion, tractor-trailers filled with unknown cargo – in
21 the Facility’s parking lot overnight;

22 f. In or around January and February 2012, employees at the
23 Reynosa Facility sought assistance from Thermo Fisher to address the Cartel activity;

24 g. In or around January and February 2012, Thermo Fisher was
25 presented with proposals for certain security measures and upgrades to the guard
26 booths, perimeter fencing and parking lot access ramps at the Reynosa Facility;

27 h. Thermo Fisher failed to meaningfully or effectively implement
28 any of the proposed security measures or upgrades;

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- i. On or about September 23, 2012, armed militants entered the cafeteria at the Reynosa Facility and stayed for an hour or more;
- j. On or about October 3, 2012, Art Wood, the Vice President of Human Resources at Thermo Fisher, instructed the Country Human Resources Director for Mexico, Roberto Enriquez, not to disclose material information regarding security threats at the Reynosa Facility to RoundRock, stating: "I believe we are through the diligence process with our buyers, so don't know that now is the time to raise the issue" while acknowledging, at the same time, that security measures must be taken to address the threats; and
- k. Thermo Fisher senior executives directed employees at the Arkansas Facility to conceal certain material facts concerning the operations of the Facility from Plaintiffs during the diligence period.

3 71. Defendants also made affirmative misrepresentations regarding the
4 condition of the Hamilton Entities' facilities verbally and in writing in, at least, the
5 Purchase Agreement, including but not limited to:

6 a. All of the Hamilton Entities' properties and buildings "are
7 suitable, sufficient and appropriate in all material respects for their current and
8 contemplated uses";

23 72. The course of conduct engaged in by Defendants, as described
24 hereinabove, violated Section 10(b) (15 U.S.C. § 78j(b)) and Rule 10b-5 (17 C.F.R. §
25 240.10b-5) insofar as Defendants: (a) Employed devices, schemes and artifices to
26 defraud Plaintiffs; (b) Made untrue statements of material facts or omitted to state
27 material facts necessary in order to make the statements made, in light of the
28 circumstances under which they were made, not misleading; or (c) Engaged in acts,

1 practices and a course of business that operated as a fraud or deceit upon Plaintiffs
2 with respect to the purchase and sale of the Hamilton Entities.

3 73. Defendants acted with the intent to defraud Plaintiffs and to induce
4 Plaintiffs to purchase the Hamilton Entities. Had Plaintiffs been aware of the
5 foregoing facts, Plaintiffs would not have made the purchase.

6 74. As a direct and proximate result of the aforesaid actions, manipulative
7 practices, misrepresentations, and omissions, Plaintiffs have suffered damages in an
8 amount to be determined according to proof at trial, together with interest thereon.

9 75. WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

SECOND CLAIM FOR RELIEF

(Fraudulent Misrepresentation Against All Defendants)

12 76. Plaintiffs reallege and incorporate by reference each and every allegation
13 contained in the above paragraphs as if fully set forth herein.

14 77. Defendants failed to disclose to Plaintiffs the material facts described
15 above, including but not limited to:

16 a. The Reynosa Facility is, and has been continuously since at least
17 2011, infiltrated by members of the Gulf Cartel, a Mexican criminal organization, on
18 a daily basis;

22 c. On or about October 19, 2011, individuals known or believed to
23 be associated with the Gulf Cartel gained access to the parking lot of the Reynosa
24 Facility and left a vehicle there for approximately nine hours;

25 d. On or about October 24, 2011, the same individuals gained entry
26 into the parking lot again and left their vehicle for more than 24 hours;

27 e. Since the incidents on October 19 and 24, 2011, members of the
28 Gulf Cartel have entered the grounds of the Reynosa Facility every day, regularly

1 leaving their cars – and, on occasion, tractor-trailers filled with unknown cargo – in
2 the Facility’s parking lot overnight;

3 f. In or around January and February 2012, employees at the
4 Reynosa Facility sought assistance from Thermo Fisher to address the Cartel activity;

5 g. In or around January and February 2012, Thermo Fisher was
6 presented with proposals for certain security measures and upgrades to the guard
7 booths, perimeter fencing and parking lot access ramps at the Reynosa Facility;

8 h. Thermo Fisher failed to meaningfully or effectively implement
9 any of the proposed security measures or upgrades;

10 i. On or about September 23, 2012, armed militants entered the
11 cafeteria at the Reynosa Facility and stayed for an hour or more;

12 j. On or about October 3, 2012, Art Wood, the Vice President of
13 Human Resources at Thermo Fisher, instructed the Country Human Resources
14 Director for Mexico, Roberto Enriquez, not to disclose material information regarding
15 security threats at the Reynosa Facility to RoundRock, stating: “I believe we are
16 through the diligence process with our buyers, so don’t know that now is the time to
17 raise the issue” while acknowledging, at the same time, that security measures must
18 be taken to address the threats; and

19 k. Thermo Fisher senior executives directed employees at the
20 Arkansas Facility to conceal certain material facts concerning the operations of the
21 Facility from Plaintiffs during the diligence period.

22 78. Defendants also made false and misleading representations to Plaintiffs
23 regarding the safety and security of the Hamilton Entities’ facilities, and omitted to
24 state material facts necessary to make the statements they made not misleading, as set
25 forth hereinabove.

26 79. Defendants took affirmative actions in order to prevent Plaintiffs from
27 discovering the above facts, including, but not limited to, withholding critical
28 information during the due diligence process and preventing Plaintiffs from

1 adequately inspecting the Hamilton Entities' facilities and speaking to employees
2 therein.

3 80. Defendants' failure to disclose the material facts described above to
4 Plaintiffs was a material omission of fact.

5 81. Defendants intended to deceive Plaintiffs by failing to disclose the
6 material facts hereinabove, and by making false and misleading representations to
7 Plaintiffs regarding the safety, security and viability of the Hamilton Entities, in order
8 to induce Plaintiffs to purchase the Hamilton Entities.

9 82. Plaintiffs were unaware of the falsity and intentionally misleading nature
10 of the aforementioned representations, including, but not limited to the
11 misrepresentations by omission of material facts, and justifiably relied upon the
12 representations in purchasing the Hamilton Entities.

13 83. Plaintiffs would not have purchased the Hamilton Entities if Defendants
14 had disclosed the material facts hereinabove.

15 84. As a direct and proximate result of the Defendants' false and
16 intentionally misleading representations and concealment of material facts, as alleged
17 herein, Plaintiffs have been damaged and are entitled to compensation in an amount to
18 be determined according to proof at trial.

19 85. Furthermore, as a result of Defendants' fraudulent conduct, Plaintiffs are
20 entitled to exemplary and punitive damages.

21 86. WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

22 **THIRD CLAIM FOR RELIEF**

23 **(Negligent Misrepresentation Against All Defendants)**

24 87. Plaintiffs reallege and incorporate by reference each and every allegation
25 contained in the above paragraphs as if fully set forth herein.

26 88. As set forth hereinabove, Defendants made material misrepresentations,
27 without reasonable grounds for believing them to be true, and omitted to state
28 material facts necessary to make the statements they made not misleading.

89. Defendants intended that Plaintiffs rely on said representations, misleading statements and omissions.

90. Plaintiffs were ignorant of the falsity of Defendants' representations and believed them to be true. Plaintiffs reasonably relied on the representations, misleading statements and omissions. In reasonable and justifiable reliance on said representations and omissions, Plaintiffs purchased the Hamilton Entities.

7 91. As a direct and proximate result of the negligent misrepresentations and
8 omissions of Defendants, as herein alleged, Plaintiffs have been damaged in a sum to
9 be determined according to proof at trial.

19 92. WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FOURTH CLAIM FOR RELIEF

(Breach of Contract Against Defendant Thermo Fisher Scientific, Inc.)

3 93. Plaintiffs reallege and incorporate by reference each and every allegation
4 contained in the above paragraphs as if fully set forth herein.

5 94. Plaintiff RoundRock 092012 LLC and Defendant Thermo Fisher
6 Scientific, Inc. entered into the Purchase Agreement, as alleged hereinabove, on or
7 about October 5, 2012, in connection with the purchase and sale of the Hamilton
8 Entities.

9 95. In the Purchase Agreement, Thermo Fisher made several representations
10 and warranties, including but not limited to: (a) in paragraph 2.11, that “. . . all of
11 such properties and buildings . . . (ii) are suitable, sufficient and appropriate in all
12 material respects for their current and contemplated uses”; (b) in paragraph 2.18, that
13 “The Companies and Subsidiaries are in compliance with all Laws of any federal,
14 state or foreign government”; and (c) in paragraph 2.7(n), that the Hamilton Entities
15 had not “suffered a Business Material Adverse Effect”.

26 96. Thermo Fisher has breached the Purchase Agreement by making material
27 misrepresentations and material omissions in connection with representations and
28 warranties in the Purchase Agreement, as alleged herein.

1 97. Plaintiffs have fully performed their promises and obligations under the
2 Purchase Agreement.

3 98. As a direct and proximate result of Thermo Fisher's breach of contract,
4 Plaintiffs have incurred general and special damages to be determined according to
5 proof at trial.

6 99. WHEREFORE, Plaintiffs pray for judgment as hereinafter set forth.

FIFTH CLAIM FOR RELIEF

(Violation of Section 9(a)(4) of the Securities Exchange Act of 1934 (15 U.S.C.

78i(a)(4)) Against All Defendants)

10. Plaintiffs reallege and incorporate by reference each and every
11. allegation contained in the above paragraphs as if fully set forth herein.

12 101. Defendants, as sellers of the Securities associated with the
13 Hamilton Entities, made misrepresentations and omissions of material facts in order
14 to induce the purchase of said Securities by Plaintiffs, including but not limited to:

15 a. The Reynosa Facility is, and has been continuously since at least
16 2011, infiltrated by members of the Gulf Cartel, a Mexican criminal organization, on
17 a daily basis;

18 b. On or about October 19, 2011, individuals known or believed to
19 be associated with the Gulf Cartel brandished weapons to employees at the Reynosa
20 Facility;

21 c. On or about October 19, 2011, individuals known or believed to
22 be associated with the Gulf Cartel gained access to the parking lot of the Reynosa
23 Facility and left a vehicle there for approximately nine hours;

24 d. On or about October 24, 2011, the same individuals gained entry
25 into the parking lot again and left their vehicle for more than 24 hours;

26 e. Since the incidents on October 19 and 24, 2011, members of the
27 Gulf Cartel have entered the grounds of the Reynosa Facility every day, regularly
28 leaving their cars – and, on occasion, tractor-trailers filled with unknown cargo – in

1 the Facility's parking lot overnight;

2 f. In or around January and February 2012, employees at the
3 Reynosa Facility sought assistance from Thermo Fisher to address the Cartel activity;

4 g. In or around January and February 2012, Thermo Fisher was
5 presented with proposals for certain security measures and upgrades to the guard
6 booths, perimeter fencing and parking lot access ramps at the Reynosa Facility;

7 h. Thermo Fisher failed to meaningfully or effectively implement
8 any of the proposed security measures or upgrades;

9 i. On or about September 23, 2012, armed militants entered the
10 cafeteria at the Reynosa Facility and stayed for an hour or more;

11 j. On or about October 3, 2012, Art Wood, the Vice President of
12 Human Resources at Thermo Fisher, instructed the Country Human Resources
13 Director for Mexico, Roberto Enriquez, not to disclose material information regarding
14 security threats at the Reynosa Facility to RoundRock, stating: "I believe we are
15 through the diligence process with our buyers, so don't know that now is the time to
16 raise the issue" while acknowledging, at the same time, that security measures must
17 be taken to address the threats; and

18 k. Thermo Fisher senior executives directed employees at the
19 Arkansas Facility to conceal certain material facts concerning the operations of the
20 Facility from Plaintiffs during the diligence period.

21 102. Defendants knew or had reasonable grounds to believe that the
22 misrepresentations and omissions were false and misleading.

23 103. Defendants' misrepresentations and omissions of material facts
24 constitute a violation of Section 9(a)(4) of the Securities Exchange Act of 1934 (15
25 U.S.C. § 78i(a)(4)).

26 104. As a direct and proximate cause of Defendants' violation of
27 Section 9(a)(4), and pursuant to Section 9(f) of the Securities Exchange Act of 1934,
28 Plaintiffs are entitled to general and special damages in an amount to be determined

1 according to proof at trial, as well as reasonable costs and attorneys' fees.

2 105. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
3 forth.

4 **SIXTH CLAIM FOR RELIEF**

5 **(Breach of the Implied Covenant of Good Faith and Fair Dealing Against**
6 **Defendant Thermo Fisher Scientific, Inc.)**

7 106. Plaintiffs reallege and incorporate by reference each and every
8 allegation contained in the above paragraphs as if fully set forth herein.

9 107. Implied within every contract is a covenant of good faith and fair
10 dealing, which prevents one contracting party from engaging in conduct that unfairly
11 frustrates the other party's right to receive the benefits of the parties' agreement.

12 108. Thermo Fisher unfairly frustrated Plaintiffs' right to receive the
13 benefits due under the parties' Purchase Agreement by making material
14 misrepresentations and omissions prior to the Sale.

15 109. As a direct and proximate cause of Thermo Fisher's breach of the
16 implied covenant of good faith and fair dealing, Plaintiffs have incurred general and
17 special damages to be determined according to proof at trial.

18 110. WHEREFORE, Plaintiffs pray for judgment as hereinafter set
19 forth.

20 **PRAYER FOR RELIEF**

21 WHEREFORE, Plaintiffs pray for judgment in favor of Plaintiffs and against
22 Defendants, and each of them, as follows:

23 1. For a judgment awarding general and special damages in favor of
24 Plaintiffs against Defendants, including all monies owed under the Agreement,
25 consequential damages, and interest thereon;

26 2. For exemplary and punitive damages;

27

28

1 3. For costs and expenses incurred in connection with this action to the
2 extent permitted by law, including but not limited to attorneys' fees pursuant to
3 Section 9(f) of the Securities and Exchange Act of 1934 (15 U.S.C. § 78i(f)); and
4 4. For such other and further relief as the Court may deem just and proper.

5
6 DATED: May 10, 2013

7
8 GLASER WEIL FINK JACOBS
9 HOWARD AVCHEN & SHAPIRO LLP

10 By: 

11
12 Attorneys for Plaintiffs
13 OpenGate Capital Group LLC, RoundRock
14 092012 LLC, RoundRock Scientific
15 International LLC and RoundRock Mexico
16 LLC
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Glaser Weil Fink Jacobs
Howard Avchen & Shapiro LLP

**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

NOTICE OF ASSIGNMENT TO UNITED STATES MAGISTRATE JUDGE FOR DISCOVERY

This case has been assigned to District Judge Audrey B. Collins and the assigned discovery Magistrate Judge is Alicia G. Rosenberg.

The case number on all documents filed with the Court should read as follows:

CV13- 3368 ABC (AGRx)

Pursuant to General Order 05-07 of the United States District Court for the Central District of California, the Magistrate Judge has been designated to hear discovery related motions.

All discovery related motions should be noticed on the calendar of the Magistrate Judge

=====
NOTICE TO COUNSEL

A copy of this notice must be served with the summons and complaint on all defendants (if a removal action is filed, a copy of this notice must be served on all plaintiffs).

Subsequent documents must be filed at the following location:

 **Western Division**
312 N. Spring St., Rm. G-8
Los Angeles, CA 90012

Southern Division
411 West Fourth St., Rm. 1-053
Santa Ana, CA 92701-4516

Eastern Division
3470 Twelfth St., Rm. 134
Riverside, CA 92501

Failure to file at the proper location will result in your documents being returned to you.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Central District of California

ORIGINAL

OpenGate Capital Group LLC, RoundRock)
092012 LLC, RoundRock Scientific)
International LLC and RoundRock Mexico)
LLC)
Plaintiff(s))
v.) Civil Action No.
Thermo Fisher Scientific Inc.)
SEE ATTACHED)
Defendant(s))

CV13-03368-ABC(AGR)

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address)

Thermo Fisher Scientific Inc.
c/o Capitol Corporate Services, Inc.
455 Capitol Mall, Suite 217
Sacramento, CA 95814

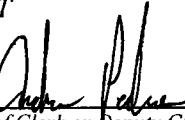
A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Fred Heather, Esq.
Amin Al-Sarraf, Esq.
GLASER WEIL FINK JACOBS HOWARD AVCHEN & SHAPIRO LLP
10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT


Signature of Clerk or Deputy Clerk

Date: May 10, 2013

COPY

1 FRED D. HEATHER - State Bar No. 110650
fheather@glaserweil.com
2 AMIN AL-SARRAF - State Bar No. 265116
aalsarraf@glaserweil.com
3 GLASER WEIL FINK JACOBS
HOWARD AVCHEN & SHAPIRO LLP
4 10250 Constellation Boulevard, 19th Floor
Los Angeles, California 90067
5 Telephone: (310) 553-3000
Facsimile: (310) 556-2920

6 Attorneys for Plaintiffs
7 OpenGate Capital Group LLC,
RoundRock 092012 LLC,
8 RoundRock Scientific International LLC and
RoundRock Mexico LLC

9
10 UNITED STATES DISTRICT COURT
11
12 CENTRAL DISTRICT OF CALIFORNIA

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OPENGATE CAPITAL GROUP LLC, a
Delaware limited liability company,
ROUNDROCK 092012 LLC, a Delaware
limited liability company, ROUNDROCK
SCIENTIFIC INTERNATIONAL LLC, a
Delaware limited liability company,
ROUNDROCK MEXICO LLC, a
Delaware limited liability company,

Plaintiffs,

v.

THERMO FISHER SCIENTIFIC, INC., a
Delaware corporation, and Does 1-50,

Defendants.

CASE NO.:

COMPLAINT FOR:

**(1) VIOLATION OF
SECTION 10(b) AND RULE 10b-5
OF THE SECURITIES EXCHANGE
ACT OF 1934;**
**(2) FRAUDULENT
MISREPRESENTATION;**
**(3) NEGLIGENT
MISREPRESENTATION;**
(4) BREACH OF CONTRACT;
**(5) VIOLATION OF SECTION
9(A)(4) OF THE SECURITIES
EXCHANGE ACT OF 1934;**
**(6) BREACH OF THE IMPLIED
COVENANT OF GOOD FAITH
AND FAIR DEALING**

Glaser Weil Fink Jacobs
Howard Avcchen & Shapiro LLP

Civil Action No. _____

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4(l))

This summons for *(name of individual and title, if any)* _____
was received by me on *(date)* _____.

I personally served the summons on the individual at *(place)* _____
on *(date)* _____; or

I left the summons at the individual's residence or usual place of abode with *(name)* _____
_____, a person of suitable age and discretion who resides there,
on *(date)* _____, and mailed a copy to the individual's last known address; or

I served the summons on *(name of individual)* _____, who is
designated by law to accept service of process on behalf of *(name of organization)* _____
on *(date)* _____; or

I returned the summons unexecuted because _____; or

Other *(specify)*: _____

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

COPY

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

I (a) PLAINTIFFS (Check box if you are representing yourself <input checked="checked" type="checkbox"/>) OpenGate Capital Group LLC, RoundRock 092012 LLC, RoundRock Scientific International LLC and RoundRock Mexico LLC		DEFENDANTS Thermo Fisher Scientific Inc.			
(b) Attorneys (Firm Name, Address and Telephone Number. If you are representing yourself, provide same.) Fred Heather, Esq. Amin Al-Sarraf, Esq. Glaser Weil Fink Jacobs Howard Avchen & Shapiro LLP 10250 Constellation Boulevard, 19th Fl Los Angeles, California 90067 310-553-3000		Attorneys (If Known)			
II. BASIS OF JURISDICTION (Place an X in one box only.)		III. CITIZENSHIP OF PRINCIPAL PARTIES - For Diversity Cases Only (Place an X in one box for plaintiff and one for defendant.)			
<input type="checkbox"/> 1 U.S. Government Plaintiff <input checked="checked" type="checkbox"/> 3 Federal Question (U.S. Government Not a Party)		Citizen of This State <input type="checkbox"/> 1 <input type="checkbox"/> 1	Incorporated or Principal Place of Business in this State <input checked="checked" type="checkbox"/> 4 <input type="checkbox"/> 4		
<input type="checkbox"/> 2 U.S. Government Defendant <input checked="checked" type="checkbox"/> 4 Diversity (Indicate Citizenship of Parties in Item III)		Citizen of Another State <input type="checkbox"/> 2 <input type="checkbox"/> 2	Incorporated and Principal Place of Business in Another State <input checked="checked" type="checkbox"/> 5 <input checked="checked" type="checkbox"/> 5		
		Citizen or Subject of a Foreign Country <input type="checkbox"/> 3 <input type="checkbox"/> 3	Foreign Nation <input type="checkbox"/> 6 <input type="checkbox"/> 6		
IV. ORIGIN (Place an X in one box only.)		PTF DEF			
<input checked="checked" type="checkbox"/> 1 Original Proceeding <input type="checkbox"/> 2 Removed from State Court <input type="checkbox"/> 3 Remanded from Appellate Court <input type="checkbox"/> 4 Reinstated or Reopened <input type="checkbox"/> 5 Transferred from another district (specify):		PTF DEF			
		6 Multi-District Litigation <input type="checkbox"/> 7 Appeal to District Judge from Magistrate Judge			
V. REQUESTED IN COMPLAINT: JURY DEMAND: <input checked="checked" type="checkbox"/> Yes <input type="checkbox"/> No (Check 'Yes' only if demanded in complaint.)		CLASS ACTION under F.R.C.P. 23: <input type="checkbox"/> Yes <input checked="checked" type="checkbox"/> No			
		MONEY DEMANDED IN COMPLAINT: \$ _____			
VI. CAUSE OF ACTION (Cite the U.S. Civil Statute under which you are filing and write a brief statement of cause. Do not cite jurisdictional statutes unless diversity.)					
Violation of Section 10(b) and Rule 10b-5 of the Securities Exchange Act of 1934 - Defendant made misrepresentations and omissions of material facts in order to induce the purchase of securities by Plaintiffs.					
VII. NATURE OF SUIT (Place an X in one box only.)					
OTHER STATUTES	CONTRACT	TORTS PERSONAL INJURY	TORTS PERSONAL PROPERTY	PRISONER PETITIONS	LABOR
<input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce/ICC Rates/etc. <input type="checkbox"/> 460 Deportation <input type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 810 Selective Service <input checked="checked" type="checkbox"/> 850 Securities/Commodities/ Exchange <input type="checkbox"/> 875 Customer Challenge 12 USC 3410 <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Act <input type="checkbox"/> 892 Economic Stabilization Act <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 894 Energy Allocation Act <input type="checkbox"/> 895 Freedom of Info. Act <input type="checkbox"/> 900 Appeal of Fee Determination Under Equal Access to Justice <input type="checkbox"/> 950 Constitutionality of State Statutes	<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loan (Excl. Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	<input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Fed. Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury-Med Malpractice <input type="checkbox"/> 365 Personal Injury-Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 463 Habeas Corpus-Alien Detainee <input type="checkbox"/> 465 Other Immigration Action	<input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability BANKRUPTCY <input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 CIVIL RIGHTS <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 444 Welfare <input type="checkbox"/> 445 American with Disabilities - Employment <input type="checkbox"/> 446 American with Disabilities - Other <input type="checkbox"/> 440 Other Civil Rights FORFEITURE PENALTY <input type="checkbox"/> 510 Motions to Vacate Sentence Habeas Corpus <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty <input type="checkbox"/> 540 Mandamus/Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition PROPERTY RIGHTS <input type="checkbox"/> 610 Agriculture <input type="checkbox"/> 620 Other Food & Drug <input type="checkbox"/> 625 Drug Related Seizure of Property 21 USC 881 <input type="checkbox"/> 630 Liquor Laws <input type="checkbox"/> 640 R.R. & Truck <input type="checkbox"/> 650 Airline Regs <input type="checkbox"/> 660 Occupational Safety/Health <input type="checkbox"/> 690 Other	<input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Mgmt. Relations <input type="checkbox"/> 730 Labor/Mgmt. Reporting & Disclosure Act <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Empl. Ret. Inc. Security Act SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ft) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWV (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g)) FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS - Third Party 26 USC 7609	

CV13-03368

FOR OFFICE USE ONLY: Case Number: _____

AFTER COMPLETING THE FRONT SIDE OF FORM CV-71, COMPLETE THE INFORMATION REQUESTED BELOW.

UNITED STATES DISTRICT COURT, CENTRAL DISTRICT OF CALIFORNIA
CIVIL COVER SHEET

VIII(a). IDENTICAL CASES: Has this action been previously filed in this court and dismissed, remanded or closed? No Yes

If yes, list case number(s): _____

VIII(b). RELATED CASES: Have any cases been previously filed in this court that are related to the present case? No Yes

If yes, list case number(s): _____

Civil cases are deemed related if a previously filed case and the present case:

(Check all boxes that apply)

- A. Arise from the same or closely related transactions, happenings, or events; or
- B. Call for determination of the same or substantially related or similar questions of law and fact; or
- C. For other reasons would entail substantial duplication of labor if heard by different judges; or
- D. Involve the same patent, trademark or copyright, and one of the factors identified above in a, b or c also is present.

IX. VENUE: (When completing the following information, use an additional sheet if necessary.)

(a) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named plaintiff resides.

Check here if the government, its agencies or employees is a named plaintiff. If this box is checked, go to item (b).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

(b) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH named defendant resides.

Check here if the government, its agencies or employees is a named defendant. If this box is checked, go to item (c).

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
	Delaware and Massachusetts

(c) List the County in this District; California County outside of this District; State if other than California; or Foreign Country, in which EACH claim arose.

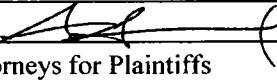
Note: In land condemnation cases, use the location of the tract of land involved.

County in this District:*	California County outside of this District; State, if other than California; or Foreign Country
Los Angeles	

* Los Angeles, Orange, San Bernardino, Riverside, Ventura, Santa Barbara, or San Luis Obispo Counties

Note: In land condemnation cases, use the location of the tract of land involved

X. SIGNATURE OF ATTORNEY (OR PRO PER):


 Attorneys for Plaintiffs

Date May 10, 2013

Key to Statistical codes relating to Social Security Cases:

Nature of Suit Code	Abbreviation	Substantive Statement of Cause of Action
861	HIA	All claims for health insurance benefits (Medicare) under Title 18, Part A, of the Social Security Act, as amended. Also, include claims by hospitals, skilled nursing facilities, etc., for certification as providers of services under the program. (42 U.S.C. 1935FF(b))
862	BL	All claims for "Black Lung" benefits under Title 4, Part B, of the Federal Coal Mine Health and Safety Act of 1969. (30 U.S.C. 923)
863	DIWC	All claims filed by insured workers for disability insurance benefits under Title 2 of the Social Security Act, as amended; plus all claims filed for child's insurance benefits based on disability. (42 U.S.C. 405(g))
863	DIWW	All claims filed for widows or widowers insurance benefits based on disability under Title 2 of the Social Security Act, as amended. (42 U.S.C. 405(g))
864	SSID	All claims for supplemental security income payments based upon disability filed under Title 16 of the Social Security Act, as amended.
865	RSI	All claims for retirement (old age) and survivors benefits under Title 2 of the Social Security Act, as amended. (42 U.S.C. (g))